

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

July 17, 2006

CALL TO PODIUM:

Fred Felton, Assistant City Manager

RESPONSIBLE STAFF:

Fred Felton, Assistant City Manager

AGENDA ITEM:

(please check one)

| | |
|-------------------------------------|------------------------------|
| <input type="checkbox"/> | Presentation |
| <input type="checkbox"/> | Proclamation/Certificate |
| <input type="checkbox"/> | Appointment |
| <input type="checkbox"/> | Public Hearing |
| <input type="checkbox"/> | Historic District |
| <input type="checkbox"/> | Consent Item |
| <input type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | Policy Discussion |
| <input type="checkbox"/> | Work Session Discussion Item |
| <input type="checkbox"/> | Other: |

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

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|-------------------|--|
| Introduced | |
| Advertised | |
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| Hearing Date | |
| Record Held Open | |
| Policy Discussion | |

TITLE:

Resolution of the Mayor and City Council Authorizing the City Manager to Negotiate and Execute a Memorandum of Agreement with Montgomery County and BP Realty Investments, LLC for the Dedication of Land, Design, Development and Construction of Watkins Mill Road.

SUPPORTING BACKGROUND:

The City of Gaithersburg, Montgomery County, and BP Realty Investments, LLC have reached tentative agreement on a concept for the complete build out of Watkins Mill Road Extended.

In conjunction with land use approvals for Monument Realty, Casey West, and Casey East, developers are obligated to dedicate all the necessary right-of-way for the construction of Watkins Mill Road Extended. As part of the Casey West approval, BP Realty Investments, LLC was required to construct four lanes of Watkins Mill Road Extended from MD 117 to I 270; however, subsequent to the approval it was determined that Watkins Mill Road Extended should be six lanes to handle anticipated traffic volumes.

Pursuant to this Agreement, Montgomery County impact taxes collected from development at Casey East, Casey West, the Monument Office Park, and McGowan Tract may be dedicated to the Watkins Mill Road project. In addition, the City will contribute to the cost of the County's participation, 50% of the total permit fees paid by the developer for the four lane bridge over the CSX right-of-way and for both segments of Watkins Mill Road Extended.

DESIRED OUTCOME:

Staff recommends approval of the resolution.

RESOLUTION NO. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MEMORANDUM
OF AGREEMENT WITH MONTGOMERY COUNTY AND BP REALTY
INVESTMENTS, LLC FOR THE DEDICATION OF LAND, DESIGN,
DEVELOPMENT AND CONSTRUCTION OF WATKINS MILL ROAD

WHEREAS, the construction of Watkins Mill Road Extended from MD355 to MD117 has been a long standing regional transportation priority; and

WHEREAS, pursuant to various development approvals, BP Realty Investments, LLC, is obligated to dedicate the land for and construct a portion of Watkins Mill Road Extended; and

WHEREAS, pursuant to the Casey East approval (Z-301), BP Realty Investments, LLC is required to dedicate land to Montgomery County for the new 6th District County Police Station; and

WHEREAS, the Memorandum of Understanding between the City of Gaithersburg and Montgomery County (R-1-06) approved by the Mayor and City Council on January 3, 2006 concerning the expenditure of Montgomery County Impact Tax funds provided that Impact Tax funds collected for development within the City of Gaithersburg may be used for the construction of Watkins Mill Road Extended; and

WHEREAS, this Memorandum of Agreement will provide for the complete build out of Watkins Mill Road Extended:

NOW THEREFORE, BE IT RESOLVED, by the Mayor and City Council of Gaithersburg, that the City Manager be and he hereby is authorized and directed to negotiate and execute a Memorandum of Agreement with Montgomery County BP Realty Investments, LLC for the dedication of land, design, development and construction of Watkins Mill Road Extended.

ADOPTED by the City Council this 17th day of July, 2006.

SIDNEY A. KATZ, MAYOR and
President of the Council

THIS IS TO CERTIFY that the foregoing
Resolution was adopted by the City Council
in public meeting assembled on the 17th
day of July, 2006.

David B. Humpton, City Manager

Memorandum of Agreement for the Dedication of Land, Design, Development and Construction of Watkins Mill Road

This Memorandum of Agreement for the dedication of land, design, development and construction of two segments of Watkins Mill Road is made this ____ day of _____, 2006 among BP Realty Investments, LLC ("Developer"), the City of Gaithersburg (the "City"), and Montgomery County, Maryland (the "County"). Segment 1 of Watkins Mill Road will extend from the limit of the existing Watkins Mill Road on the west side of I-270 to the southbound ramps of the planned Watkins Mill Road Interchange at I-270 ("the State Project"). Segment 2 will extend from the existing intersection of Watkins Mill Road at MD 355 to the northbound ramps of the same interchange. The two segments conform to the County's adopted master planned alignment and are referred to as "the Project".

The City, the County and the Developer agree to participate in the dedication of the right-of-way, design, development and construction of the Project, and to work together and individually with the State towards the acceleration of the final design and construction of the State Project.

1. In consideration of the County entering into this Memorandum of Agreement, advancing its timing for the construction of the Project, and in satisfaction of land use approvals by the City, Developer agrees to do the following:

(a) At no cost to the County or the City, dedicate to the County the right-of-way for the Project as shown on Attachment A attached hereto.

(b) At no cost to the County or City, proceed with the engineering design of the Project, the permitting of the Project and the coordination with the State of the Project with the proposed State Project.

(c) At no cost to the County or the City except as herein stated, proceed with the construction of the Project as further described herein; and

(d) Dedicate all the land required for the construction of the 6th District Police Station, as generally shown on Attachment B. Final location for the Police Station will be determined upon approval of a schematic development plan that the Developer has been working on with the City. Any change in location of the land for the 6th District Station from the location shown on Attachment B shall be subject to approval of the County.

2. (a) The parties agree that the County will assist in plan review for the four-lane bridge over the CSX tracks and cursory review for both segments of Watkins Mill Road Extended. The City of Gaithersburg will issue the permits and be responsible for inspections of the bridge and both segments of the road.

(b) Upon completion of the road, the County will assume ownership and maintenance; the City will be responsible for snow removal of the Project for a period of ten (10) years or until such time as the road is turned over to the State Highway Administration, whichever is less.

3. (a) Subject to appropriation of funds for the Project, the County will participate in the cost of construction of the Project by contributing to the actual third party hard costs of construction for the cost of two lanes of the six lane section of Segment 1 and to the actual third party hard costs of construction for the cost of four lanes of the six lane section of Segment 2. Total contribution by the County, including all financial contributions by the City including Impact Taxes generated in the City of Gaithersburg will not exceed \$15,000,000. Notwithstanding the foregoing the County will not participate in the costs of any of the right-of-way, nor any costs for oversight or management of the Project. The County's funds will be used exclusively for third party contract costs.

(b) The City agrees to participate in the cost of the two segments of the Project by earmarking for the project, as part of the County's total contribution, all the Impact Taxes being held by Montgomery County on the date of this agreement generated within the City of Gaithersburg and those Impact Taxes to be generated by the following developments: Casey East, Casey West, the Monument Office Park, and the McGowan tract. In addition, the City will contribute to the cost of the County's participation, 50% of the total permit fees paid by the developer for the four lane bridge over the CSX right-of-way and for both segments of Watkins Mill Road Extended.

(c) Developer agrees to cover all costs of land, design, development and construction of the Project.

(d) The County and the City will pay their share of costs pursuant to a Subdivision Roads Participation Agreement to be entered into between the parties and reflecting the terms set out herein.

(e) The Developer acknowledges and agrees that the County can only participate in the construction costs of the Project if the contracts for the Project follow the standard participation process in the County, which includes a public bid process. The Developer may elect to proceed with Segment 1 at its own cost. If so, the parties agree to discuss the actual scope of the work by the Developer, so the remaining part of Segment 1 can be programmed by the County in the near future. The County also agrees to negotiate an increase in their cost participation for Segment 2, if the developer agrees to build the entire Segment 1 at his total cost.

(f) The Developer understands and agrees that the engineering, construction management, bond and permit fees are not included in the term "construction cost", and that these costs, along with all other soft costs and management costs are the full responsibility of the Developer. Costs incurred by the Developer in the construction of the Project will be eligible for Impact Tax Credits, in

accordance with existing County Law and procedures. The County's participation will only be for its share of third party construction costs incurred pursuant to a public bid process and a contract that has been approved by the County.

4. The developer will dedicate, at no cost to the City, the County or the State all of the right of way Developer controls for construction of the Interchange ramp located on the north-east quadrant of the Interchange. With this dedication, the City will control the complete right of way for two of the quadrants and portions of the right of way for the remaining two quadrants needed for the construction of the Interchange.

5. The City agrees to turn over all the right of way it controls to the State, at no cost to the State or the County, for the construction of the I-270 Interchange at Watkins Mill Road. In addition, the City commits to request the dedication of the remaining right of way for the Interchange at the time when development proposals are submitted to the City. That right of way, if dedicated to the City, will be also turned over to the State, at no cost.

6. The Developer, the County and the City agree to cooperate to encourage the State of Maryland to accelerate design and construction of the State Project, and once constructed and opened to traffic to have the State ultimately take over the ownership and maintenance responsibility for the entire Watkins Mill Road, from Clopper Road (MD 117) to Frederick Road (MD 355). To that effect the parties agree to have the segments designed to State of Maryland standards and specifications.

7. The parties further understand and condition this Memorandum of Agreement by the following clauses:

(a) The County's participation in the cost of the Project is subject to appropriation and such costs are not included in the current Capital Budget. Funding for the Project will be requested following a preliminary determination of total costs. Funds will only become available upon appropriation by the Montgomery County Council.

(b) The City's participation in the cost of the Project is limited to 50% of the permit fees for both segments of Watkins Mill Road Extended and the bridge over the CXS right-of-way and dedication of impact tax revenues as outlined in paragraph 3(b).

(c) A formal Subdivision Participation Agreement will be entered into within ninety calendar days of funding approval.

Agreed by:

BP Realty Investments LLC

Date

Montgomery County

Date

City of Gaithersburg

Date